

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CHARLES E. MOSES, Jr.,
CDCR # K-65174

Plaintiff,

vs.

CYNTHIA WHITE,

Defendant.

Civil No. 12cv0073 JLS (BGS)

ORDER:

**(1) GRANTING MOTION TO
PROCEED *IN FORMA PAUPERIS*,
[ECF No. 2];**

**(2) DISMISSING ACTION
PURSUANT TO 28 U.S.C.
§§ 1915(e)(2)(B) & 1915A(b)**

Plaintiff, a state inmate currently incarcerated at the California Medical Facility located in Vacaville, California and proceeding pro se, has filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. In addition, Plaintiff has filed a Motion to Proceed *In Forma Pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a).

I. MOTION TO PROCEED IFP

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay only if the party is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). Prisoners granted leave to proceed IFP however, remain obligated to pay the entire fee in installments, regardless of

1 whether the action is ultimately dismissed for any reason. *See* 28 U.S.C. § 1915(b)(1) & (2).

2 The Court finds that Plaintiff has submitted an affidavit which complies with 28 U.S.C.
3 § 1915(a)(1), and that he has attached a certified copy of his trust account statement pursuant to
4 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2. Plaintiff's trust account statement shows that
5 he has insufficient funds from which to pay an initial partial filing fee.

6 Accordingly, the Court **GRANTS** Plaintiff's Motion to Proceed IFP [ECF No. 2] and
7 assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1).

8 **II. SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

9 The Prison Litigation Reform Act ("PLRA")'s amendments to 28 U.S.C. § 1915 also
10 obligate the Court to review complaints filed by all persons proceeding IFP and by those, like
11 Plaintiff, who are "incarcerated or detained in any facility [and] accused of, sentenced for, or
12 adjudicated delinquent for, violations of criminal law or the terms or conditions of parole,
13 probation, pretrial release, or diversionary program," "as soon as practicable after docketing."
14 *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). Under these provisions, the Court must sua
15 sponte dismiss any prisoner civil action and all other IFP complaints, or any portions thereof,
16 which are frivolous, malicious, fail to state a claim, or which seek damages from defendants who
17 are immune. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A.

18 Plaintiff names only one Defendant, Cynthia White, whom he alleges was the court
19 reporter who prepared the transcripts from his criminal proceedings. *See* Compl. at 3. Plaintiff
20 seeks to hold Defendant White liable for alleged violations of Plaintiff's Fourteenth Amendment
21 due process rights because Plaintiff claims there are numerous errors in these transcripts and "it
22 appears" that the transcripts were "altered to fit the prosecution misstatements." *Id.*

23 These claims appear to mount to an attack on the constitutional validity of Plaintiff's
24 criminal proceedings, and as such, may not be maintained pursuant to 42 U.S.C. § 1983 unless
25 and until he can show that his criminal conviction has already been invalidated. *Heck v.*
26 *Humphrey*, 512 U.S. 477, 486-87 (1994).

27 "In any § 1983 action, the first question is whether § 1983 is the appropriate avenue to
28 remedy the alleged wrong." *Haygood v. Younger*, 769 F.2d 1350, 1353 (9th Cir. 1985) (en

1 banc). A prisoner in state custody simply may not use a § 1983 civil rights action to challenge
2 the “fact or duration of his confinement.” *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973). The
3 prisoner must seek federal habeas corpus relief instead. *Wilkinson v. Dotson*, 544 U.S. 74, 78
4 (2005) (*quoting Preiser*, 411 U.S. at 489). Thus, Plaintiff’s § 1983 action “is barred (absent
5 prior invalidation)--no matter the relief sought (damages or equitable relief), no matter the target
6 of his suit (state conduct leading to conviction or internal prison proceedings)--if success in that
7 action would necessarily demonstrate the invalidity of confinement or its duration.” *Wilkinson*,
8 544 U.S. at 82.

9 In this case, Plaintiff’s claims appear to “necessarily imply the invalidity” of his criminal
10 proceedings and subsequent incarceration. *Heck*, 512 U.S. at 487. In creating the favorable
11 termination rule in *Heck*, the Supreme Court relied on “the hoary principle that civil tort actions
12 are not appropriate vehicles for challenging the validity of outstanding criminal judgments.”
13 *Heck*, 511 U.S. at 486. This is precisely what it appears that Plaintiff attempts to accomplish
14 here. Therefore, to satisfy *Heck*’s “favorable termination” rule, Plaintiff must first allege facts
15 which show that the criminal proceeding which forms the basis of his § 1983 Complaint has
16 already been: (1) reversed on direct appeal; (2) expunged by executive order; (3) declared
17 invalid by a state tribunal authorized to make such a determination; or (4) called into question
18 by the grant of a writ of habeas corpus. *Heck*, 512 U.S. at 487; *see also Butterfield v. Bail*, 120
19 F.3d 1023, 1025 (9th Cir. 1997). Plaintiff’s Complaint alleges no facts sufficient to satisfy
20 *Heck*. Accordingly, because Plaintiff seeks damages for allegedly unconstitutional criminal
21 proceedings, and because he has not shown that his criminal conviction has been invalidated,
22 either by way of direct appeal, state habeas or pursuant to 28 U.S.C. § 2254, a § 1983 claim for
23 damages cannot be maintained, *see Heck*, 512 U.S. at 489-90, and his Complaint must be
24 dismissed without prejudice, *see Trimble v. City of Santa Rosa*, 49 F.3d 583, 585 (9th Cir. 1995)
25 (finding that an action barred by *Heck* has not yet accrued and thus, must be dismissed without
26 prejudice so that the plaintiff may reassert his § 1983 claims if he ever succeeds in invalidating
27 the underlying conviction or sentence); *accord Blueford v. Prunty*, 108 F.3d 251, 255 (9th Cir.
28 1997).

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2 **III. CONCLUSION AND ORDER**

3 Good cause appearing, **IT IS HEREBY ORDERED:**

4 1. Plaintiff's Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a) [ECF No. 2] is
5 **GRANTED.**

6 2. The Secretary of California Department of Corrections and Rehabilitation, or his
7 designee, is ordered to collect from Plaintiff's prison trust account the \$350 balance of the filing
8 fee owed in this case by collecting monthly payments from the trust account in an amount equal
9 to twenty percent (20%) of the preceding month's income credited to the account and forward
10 payments to the Clerk of the Court each time the amount in the account exceeds \$10 in
11 accordance with 28 U.S.C. § 1915(b)(2). ALL PAYMENTS SHALL BE CLEARLY
12 IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO THIS ACTION.

13 3. The Clerk of the Court is directed to serve a copy of this Order on Matthew Cate,
14 Secretary, California Department of Corrections and Rehabilitation, P.O. Box 942883,
15 Sacramento, California, 94283-0001.

16 **IT IS FURTHER ORDERED** that:

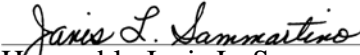
17 4. Plaintiff's Complaint is **DISMISSED** without prejudice pursuant to 28 U.S.C.
18 §§ 1915(e)(2)(b) & 1915A. However, Plaintiff is **GRANTED** forty five (45) days leave from
19 the date this Order is filed in which to file a First Amended Complaint which cures all the
20 deficiencies of pleading noted above. Plaintiff's Amended Complaint must be complete in itself
21 without reference to the superseded pleading. *See* S.D. CAL. CIVLR 15.1. Defendants not
22 named and all claims not re-alleged in the Amended Complaint will be considered waived. *See*
23 *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987). Further, if Plaintiff's Amended Complaint
24 fails to state a claim upon which relief may be granted, it may be dismissed without further
25 leave to amend and may hereafter be counted as a "strike" under 28 U.S.C. § 1915(g). *See*
26 *McHenry v. Renne*, 84 F.3d 1172, 1177-79 (9th Cir. 1996).

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1 5. The Clerk of Court is directed to mail a court approved § 1983 form complaint to
2 Plaintiff.

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4 DATED: March 19, 2012

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6 Honorable Janis L. Sammartino
7 United States District Judge
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